

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, RUS shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to RUS, which may include the following:

(a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms through which the borrower will notify the Government of each election it makes to prepay certain Qualified Notes upon a requested closing date and the Government will notify the borrower of the established closing date and prepayment amount for the Qualified Notes for each closing;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered prior to or at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice by either telephone or facsimile to be given by RUS to the borrower not more than 8 nor less than 3 business days before a scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the

terms and conditions of the financing as RUS may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding electric loans as of the date of initial closing;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide RUS, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agreements in form and substance, and on terms and conditions, satisfactory to RUS;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by RUS of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Initial closing.

(a) Upon receipt of the prepayment agreement, the borrower may submit, pursuant to the terms of the prepayment agreement, a closing request which shall request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to the borrower's closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date.

§ 1786.160 Subsequent closings.

(a) Each subsequent prepayment after the initial closing shall be facilitated with the submission of an additional closing request by the borrower. Each closing request must request a

§ 1786.161

closing date no less than 30 business days from the date of the request.

(b) The Government will respond to each subsequent closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date in each case.

§ 1786.161 Return of Qualified Notes and release of lien.

Upon payment to RUS at closing of the full amount specified in the notice delivered by RUS to the borrower pursuant to the terms of the prepayment agreement (see § 1786.158(e)), RUS will deliver to the borrower at closing those Qualified Notes which have been paid in full at such closing, and upon payment and discharge of all outstanding RUS debt obligations by the borrower, RUS will deliver to the borrower at the final closing a release of lien prepared by the borrower pursuant to the terms of the prepayment agreement.

§ 1786.162 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its RUS Loan Contract, its outstanding notes issued to RUS, and the RUS Mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS Mortgage, or other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments of any loans pursuant to the RE Act in accordance with the terms of such loans.

§ 1786.163 Existing wholesale power contracts.

(a) If the borrower is a party to a wholesale power contract with a power supply borrower financed pursuant to the RE Act, the Administrator may require that the borrower and the power supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

7 CFR Ch. XVII (1-1-07 Edition)

SAMPLE CONTRACT TERMS

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes or other obligations as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either: (1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

The Administrator may require, among other things, that any payment owed under (2) of the preceding sentence that represents a portion of the power supply borrower's indebtedness on Notes shall be paid by the borrower in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.